

Exhibit No.: 44Deponent: KenneyDate: 11/17/05

Nicole E. Guilbert

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

SERIAL NO. 74/633170 Jacobs Gallery	APPLICANT Jacobs Gallery	PAPER NO.
MARK LIFE IS GOOD		ADDRESS: ASSISTANT COMMISSION FOR TRADEMARKS 2900 Crystal Drive Arlington, Virginia 22202-31
ADDRESS Jacobs Gallery 299 Elliot St. Suite 2 Newton, MA 02164		If no fees are enclosed, the address should include the words "Box 5." Please provide in all correspondence:
ACTION NO. 01		1. Filing Date, serial number, mark and Applicant's name.
MAILING DATE 07/19/95		2. Mailing date of this Office action.
REF. NO.		3. Examining Attorney's name and Law Office number.
FORM PTO-1525 (5-90)	U.S. DEPT. OF COMM. PAT. & TM OFFICE	4. Your telephone number and ZIP code.

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT. For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.

RE: Serial Number 74/633170 LIFE IS GOOD

1. The assigned examining attorney has reviewed the referenced application and determined the following.

Refusal to Register Under Sections 1, 2, and 45

1. The examining attorney refuses registration on the Principal Register because the proposed mark is ornamental as used on the goods. Trademark Act Sections 1, 2 and 45, 15 U.S.C. Sections 1051, 1052 and 1127.
2. The examining attorney must conclude on the present record that the public would perceive the proposed mark merely as a decorative or ornamental feature of the goods and not as an indicator of the source of the goods. See *In re Owens-Corning Fiberglass Corp.*, 774 F.2d 1116, 227 USPQ 417 (Fed. Cir. 1985); *In re David Crystal, Inc.*, 296 F.2d 771, 132 USPQ 1 (CCPA 1961); *In re Villeroy & Boch S.A.R.L.*, 5 USPQ2d 1451 (TTAB 1987); *In re Astro-*

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Gods Inc., 223 USPQ 621 (TTAB 1984); *In re Olin Corp.*, 181 USPQ 182 (TTAB 1973); TMEP section 1202.04 *et seq.*

3. As used on the specimens of record, the proposed mark LIFE IS GOOD appears to be part of an overall design featuring a cow's face, with hayseed sticking out of the cow's mouth. The proposed mark LIFE IS GOOD thus appears to be a general comment on the merits of the simple life without acting as a source-identifier (trademark) for applicant's goods.

4. **Evidence to Overcome This Refusal:**

The applicant may attempt to overcome the stated refusal in several ways.

- (a) The applicant may submit evidence that the proposed mark has become distinctive of the applicant's goods in commerce. Evidence submitted to show that the mark has acquired distinctiveness as an indicator of the source of the applicant's goods may consist of examples of advertising and promotional materials that specifically promote the subject matter for which registration is sought *as a mark*, dollar figures for advertising devoted to such promotion, dealer and consumer statements of recognition of the subject matter as a mark and any other evidence that establishes recognition of the matter as a mark for the goods. *See* TMEP section 1202.04(d).
- (b) The applicant may also attempt to overcome the refusal by showing that the proposed mark is an indicator of secondary source or sponsorship for the identified goods. That is, the applicant may submit evidence showing that the proposed mark would be recognized as a trademark or service mark through the applicant's use of the proposed mark with goods or services other than those identified here. The applicant must establish that, as a result of this use on other goods or services, the public would recognize the applicant as the secondary source or sponsor of the identified goods. *See* TMEP section 1202.04(c).
- (c) Finally, the applicant may overcome the refusal by providing substitute specimens which demonstrate use of the proposed mark in a non-ornamental fashion. If the applicant chooses to provide substitute specimens, the applicant must verify, with an affidavit or a declaration under 37 C.F.R. Section 2.20, that the substitute specimens were in use in commerce at least as early as the filing date of the application. 37 C.F.R. Section 2.59(a); TMEP section 905.10.

For the sake of applicant's convenience, the examining attorney attaches a declaration form for use in support of applicant's substitute specimens. *See* attachment.

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Search Results

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01.

Response Guidelines

No set form is required for response to this Office action. The applicant must respond to each point raised. The applicant should simply set forth the required changes or statements and request that the Office enter them. The applicant must sign the response. In addition to the identifying information required at the beginning of this letter, the applicant should provide a telephone number to speed up further processing.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.



Eleanor K. Meltzer, Examining Attorney
Law Office 10, (703) 308-9110 x133
Fax: (703) 308-7190

In order to provide better service for trademark applicants and registrants, the responsibility for receiving, opening and routing of trademark mail is being transferred to the Assistant Commissioner for Trademarks. In order to more efficiently process the mail, the Assistant Commissioner for Trademarks has determined that, **beginning July 5, 1994, trademark-related mail (except for trademark-related documents sent to the Assignment Branch for recordation and requests for certified copies of trademark application and registration documents) should be sent directly to:**

**Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513**

Patent-related mail should continue to be sent to: Commissioner of Patents and Trademarks, Washington, D.C. 20231.

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The substitute specimens were in use in commerce at least as early as the filing date of this application.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this application are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

(Signature)

Mark Twining

(Print or Type Name and Position)

(Date)